

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

STATE OF TEXAS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,
UNITED STATES DEPARTMENT OF
THE INTERIOR, and GALE NORTON
in her Official Capacity as Secretary of the
Department of the Interior,

Defendants

and

Kickapoo Traditional Tribe of Texas

Defendant-Intervenor

CA No. A 04 CA 143 LY
Hon. Lee Yeakel

**UNITED STATES' EXHIBITS
FOR PRELIMINARY INJUNCTION AND
MOTION TO STAY ADMINISTRATIVE PROCEDURES HEARING**

The Defendants, United States of America, United States Department of the Interior, and Gale Norton, Secretary of the Interior ("United States") reiterates, as presented in its Response to the Plaintiff's Application for Preliminary Injunction, that it believes the Court can summarily dispose of the State's Application without the need for an evidentiary hearing. However, in the event the Court determines such a hearing is required, the United States reserves the right to submit the following exhibits:

- 1) March 30, 2004 Letter from Pilar M. Thomas, United States Department of Justice to William T. Deane, Office of the Attorney General, State of Texas.
- 2) March 18, 2004 Letter from Jeff L. Rose, Division Chief, General Litigation Division to George Skabine, Director, Office of Indian Gaming Management
- 3) Class III Gaming Procedures Timeline

The United States also intends to call Paula Hart, Office of Indian Gaming Management, Bureau of Indian Affairs as a witness.

Respectfully Submitted,

THOMAS SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division

Dated: April 16, 2004



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Trial Attorney
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Western District of Texas

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DANIEL CASTILLO
Assistant United States' Attorney
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Suite 1000
Austin, TX 78701

CERTIFICATE OF SERVICE

I hereby certify that on or before this 16th day of April, 2004, a true and correct copy of the foregoing United States' Response in Opposition to Plaintiff's Application for Preliminary Injunction and For Stay of Administrative Proceeding and United States' Exhibits for Preliminary Injunction and Motion to Stay Administrative Procedures Hearing were served by United States Postal Service first class, postage pre-paid mail to the following:

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Dated: April 16, 2004

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Pilar M. Thomas
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United States of America



U.S. Department of Justice

Environment and Natural Resources Division

SCA: pmt 90-6-21-00926

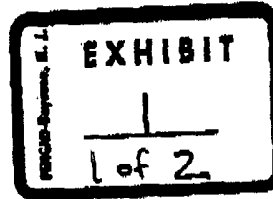
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VIA FACSIMILE

March 30, 2004

William T. Deane
Assistant Attorney General
General Litigation Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548



**COPY FOR YOUR
INFORMATION**

Re: State of Texas v. United States of America, et al.
U.S. District Court, Western District of Texas, Austin Division
CA No. A04CA143-LY

Dear Mr. Deane:

The State of Texas ("State") has filed an Application for Preliminary Injunction, seeking a stay of the application of the Department of the Interior's ("Department") administrative process under 25 C.F.R. Part 291 to the State of Texas. It is our understanding that the State is concerned about the potential final approval of gaming procedures for the Kickapoo Tribe under this challenged regulation.

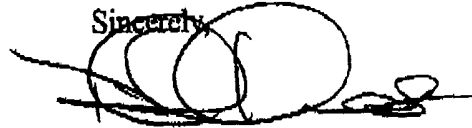
In the past, the Department has represented, to Congress and to the court in State of Florida, et al. v. United States, Case No.: 4:99-CV137-RH (N.D. Fla.), that it will not make a set of procedures effective by publishing them in the Federal Register until a court has been able to adjudicate the Secretary's authority to issue the regulations. In an effort to respond to the State's concerns raised in its Application for Preliminary Injunction, this letter serves as a similar assurance and representation.

The United States intends to file its response to the State's complaint within sixty (60) days of service. That response is due on May 14, 2004. The Interior Department has authorized me to represent for the United States that there will be no final agency decision or other final agency action on the gaming procedures for the Kickapoo Tribe before that date. Thus, the State's Application for Preliminary Injunction should be moot.

Given this representation, it is unnecessary to go forward with the State's Application for Preliminary Injunction. Regardless of the merits of the State's substantive issues, there clearly is no threat of irreparable harm—a critical element of establishing an injunction—given that no agency action is imminent. Therefore, in order to reserve the resources of the Court and the parties, the United States requests that the State withdraw its Application. This will allow the parties to litigate the substantive issues raised in Plaintiff's complaint on their merits as opposed to diverting resources toward pursuing emergency relief, which is unnecessary and untimely at this moment.

We look forward to your consideration of our request. If you have any questions, please do not hesitate to contact me at (202) 353-8596. We look forward to working with you to resolve the State's request for a preliminary injunction in a cooperative manner, as opposed to bringing this unnecessarily to the attention of the busy Court.

Sincerely,



Pilar M. Thomas
Trial Attorney

cc: Richard G. Myers
Office of the Solicitor
Division of Indian Affairs
U.S. Department of the Interior
1849 C Street NW - MS 6456
Washington, DC 20240

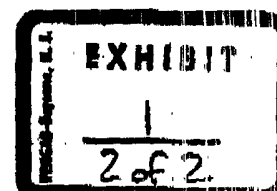
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NR
3/18/04



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

March 18, 2004

Via Fax: (202) 273-3153
and UPS Overnight Mail



Mr. George Skabine
Director
Office of Indian Gaming Management
Office of the Assistant Secretary -- Indian Affairs
1849 C Street NW
MS 4543-MIB
Washington, D.C. 20240

Re: *State of Texas v. United States of America, et al.*
CA No. A04CA143-LY, U.S. District Court, Western District of Texas, Austin Division

Dear Mr. Skabine:

In response to your invitation to comment on the Kickapoo Tribe of Texas' proposal for Class III gaming in the State of Texas, I enclose a copy of the Original Complaint which the State of Texas filed last week in the United States District Court for the Western District of Texas, Austin Division.

As set forth in the Complaint, it is our position that the Secretarial procedures in 25 CFR § 291 lack proper authority and conflict with the provisions of IGRA. Based on that position, we respectfully decline to respond at this time and request that the Secretary abate these proceedings under the challenged rules until a judicial determination can be reached.

Sincerely,

JEFF L. ROSE
Division Chief
General Litigation Division
(512) 463-2120

Enc: Plaintiff's Original Complaint, CA No. A04CA143-LY

cc: John Ashcroft, United States Attorney General
Johnny Sutton, United States Attorney for the Western District of Texas ✓

EXHIBIT

3

CLASS III GAMING PROCEDURES TIMELINE

